

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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DANIEL P. KLAHN, SR.,

Case No. 2:16-cv-00720-JAD-CWH

Plaintiff,

V.

RICHARD MEYERSON,

SCREENING ORDER AND REPORT AND RECOMMENDATION

Defendant

RICHARD MEYERSON,
Defendant

Presently before the court is pro se plaintiff Daniel Klahn's amended complaint (ECF No. 5), which the court now screens as required by as required by 28 U.S.C. § 1915(e)(2).

1. BACKGROUND

This case arises out of a financial dispute between Klahn and defendant Richard Meyerson, his former employer. Klahn’s original complaint alleged the requisite amount in controversy to invoke the court’s diversity jurisdiction under 28 U.S.C. § 1332(a), but Klahn did not allege facts indicating that he and Meyerson are citizens of different states. As the party seeking to invoke the court’s jurisdiction, Klahn bears the burden of establishing jurisdiction exists. *See Naffe v. Frey*, 789 F.3d 1030, 1040 (9th Cir. 2015). The court therefore dismissed the complaint for lack of subject-matter jurisdiction, with leave to amend. (Screening order (ECF No. 3).)

Klahn filed an amended complaint that alleges he is a citizen of Nevada and Meyerson is a citizen of California. (Am. Compl. (ECF No. 5) at 1.) He further alleges more than \$75,000 is in dispute, thereby satisfying the amount in controversy. (*Id.* at 7-8.) Having satisfied itself that the requirements for diversity jurisdiction under § 1332(a) have been met, the court will screen Klahn's amended complaint.

1 Klahn states that in 2005, Meyerson promised to increase his salary by \$1,100 per month
2 if certain conditions were met. (*Id.* at 7.) Klahn alleges that he met the conditions, but that
3 Meyerson refused to pay the increased salary for five years. (*Id.*) Klahn alleges that Meyerson
4 terminated Klahn's employment in April of 2012. (*Id.* at 2.) Klahn states that August of 2012, he
5 requested transfer paperwork for his 401k account and was instructed by Michelle Hogle,
6 operations manager, to have Meyerson sign the transfer paperwork because he was the trustee of
7 the 401k account. (*Id.*) Klahn states that in September of 2012, he contacted Meyerson regarding
8 the transfer paperwork and did not receive a response. (*Id.*) During October and November of
9 2012, Klahn unsuccessfully attempted to transfer the funds by directly contacting agents at John
10 Hancock Investments and State Farm. (*Id.*)

11 Klahn states that when he was preparing his taxes in February of 2013, he contacted John
12 Hancock Investments because he had not received a tax statement for his 401k account and was
13 informed the address on his statements had been changed by Meyerson. (*Id.*) Klahn alleges that
14 on November 13, 2013, Meyerson filed false paperwork stating that Klahn had abandoned his
15 401k account after his termination. (*Id.*) According to Klahn, he learned in November of 2014
16 that his 401k funds had been transferred to Meyerson's 401k account on October 8, 2018,¹ and
17 that Klahn's 401k account was closed. (*Id.* at 3.) Klahn states that he sent a fraud report to the
18 Securities and Exchange Commission, and that during the SEC's investigation of this incident,
19 Meyerson convinced the SEC's investigators that Klahn had embezzled money from Meyerson
20 during his employment. (*Id.*)

21 Klahn also alleges that during a telephone conference in May 2012, Meyerson falsely
22 stated Klahn stole money from him to purchase a Quiznos franchise and that the franchise should
23 belong to Meyerson. (*Id.* at 4.) He also alleges Meyerson made false statements about him to
24 investigators, but he does not specify when the statements were made. Klahn states that
25 Meyerson's false statements about him resulted in Klahn being held in jail on a \$500,000 bond
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27 _____
28 ¹ Based on the context and the fact the amended complaint was filed on April 11, 2018, the court
understands this date to be a typographical error.

1 and partially resulted in Klahn's conviction for theft of \$100,000. (*Id.* at 5.) Klahn further states
2 Meyerson altered an email to make it appear that Klahn admitted to stealing \$180,000. (*Id.* at 3-
3 5.) Klahn now brings claims against Meyerson for fraud and slander.

4 **II. ANALYSIS**

5 In screening a complaint, a court must identify cognizable claims and dismiss claims that
6 are frivolous, malicious, file to state a claim on which relief may be granted, or seek monetary
7 relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). Dismissal for
8 failure to state a claim under § 1915(e)(2) incorporates the standard for failure to state a claim
9 under Federal Rule of Civil Procedure 12(b)(6). *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir.
10 2012). To survive § 1915 review, a complaint must "contain sufficient factual matter, accepted as
11 true, to state a claim to relief that is plausible on its face." *See Ashcroft v. Iqbal*, 556 U.S. 662,
12 678 (2009). The court liberally construes pro se complaints and may only dismiss them "if it
13 appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which
14 would entitle him to relief." *Nordstrom v. Ryan*, 762 F.3d 903, 908 (9th Cir. 2014) (quoting
15 *Iqbal*, 556 U.S. at 678).

16 **A. Fraud**

17 To state a claim for fraud, Klahn must allege that (1) Meyerson misrepresented a material
18 fact, which he knew to be false; (2) Meyerson intended that Klahn rely on the misrepresentation;
19 (3) Klahn detrimentally relied on the misrepresentation; and (4) the misrepresentation
20 proximately caused damages. *Chen v. Nevada State Gaming Control Bd.*, 994 P.2d 1151, 1152
21 (Nev. 2000). Under Federal Rule of Civil Procedure 9(b), fraud has a strict pleading standard,
22 which requires a plaintiff to "state with particularity the circumstances constituting fraud." Fed.
23 R. Civ. P. 9(b); *see Ashcroft v. Iqbal*, 556 U.S. 662, 686 (2009). Pleading fraud with particularity
24 requires "an account of the time, place, and specific content of the false representations, as well as
25 the identities of the parties to the misrepresentations." *Swartz v. KPMG LLP*, 476 F.3d 756, 764
26 (9th Cir. 2007); *see also Morris v. Bank of Nev.*, 886 P.2d 454, 456, n.1 (Nev. 1994). Nevada's
27 statute of limitations for fraud claims is three years, "but the cause of action in such a case shall
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1 be deemed to accrue upon the discovery by the aggrieved party of the facts constituting the fraud
 2 or mistake.” Nev. Rev. Stat. § 11.190(3)(d).

3 Liberally construing Klahn’s allegations, the court finds there are sufficient factual
 4 allegations for a claim of fraud related to Meyerson’s alleged transfer of the 401k funds.
 5 Specifically, Klahn alleges that in November 2014, he learned Meyerson filled out paperwork
 6 falsely stating that Klahn abandoned his 401k account so that the account would be closed and
 7 transferred to Meyerson, resulting in Klahn losing the funds in the account. The court further
 8 finds the allegations are made with particularity sufficient to satisfy Federal Rule of Civil
 9 Procedure 9(b). The court therefore will recommend that this fraud claim be allowed to proceed
 10 against Meyerson.

11 As for Klahn’s allegation that Meyerson committed fraud by promising to increase his pay
 12 in 2005 but made various excuses and failed to do so for five years, the court finds those fraud
 13 allegations are barred by the statute of limitations. Even liberally construing the allegations in the
 14 complaint, Klahn knew about Meyerson’s refusal to increase his pay in 2005, which was
 15 approximately 11 years before this case was filed. The court therefore will recommend dismissal
 16 with prejudice of Klahn’s fraud claim regarding his pay increase.

17 **B. Slander**

18 Klahn alleges Meyerson slandered him by falsely stating that Klahn stole money to
 19 purchase a Quiznos franchise, among other things. Under Nevada law, the statute of limitations
 20 for a slander claim is two years. Nev. Rev. Stat. § 11.190(4)(c). Given that Klahn alleges
 21 Meyerson made false statements about him in 2012, but did not file this case until 2016, Klahn’s
 22 slander claim is barred by § 11.190(4)(c). The court therefore will recommend dismissal of this
 23 claim with prejudice.

24 **III. CONCLUSION**

25 IT IS THEREFORE RECOMMENDED that Klahn’s fraud claim against Meyerson
 26 regarding the 401k account be allowed to proceed.

27 IT IS FURTHER RECOMMENDED that all other claims be dismissed with prejudice
 28 because they are barred by the applicable statutes of limitations.

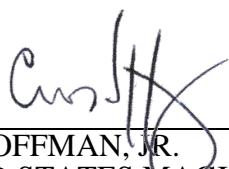
1 **IV. NOTICE**

2 This report and recommendation is submitted to the United States district judge assigned
3 to this case under 28 U.S.C. § 636(b)(1). A party who objects to this report and recommendation
4 may file a written objection supported by points and authorities within fourteen days of being
5 served with this report and recommendation. Local Rule IB 3-2(a). Failure to file a timely
6 objection may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951 F.2d
7 1153, 1157 (9th Cir. 1991).

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9 DATED: July 24, 2019

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12 C.W. HOFFMAN, JR.
13 UNITED STATES MAGISTRATE JUDGE

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